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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/852,301	05/10/2001	Naoto Kinjo	Q63870	3820

7590

11/28/2005

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2100 Pennsylvania Avenue, NW
Washington, DC 20037-3213

EXAMINER

THOMPSON, JAMES A

ART UNIT	PAPER NUMBER
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2624

DATE MAILED: 11/28/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action Before the Filing of an Appeal Brief	Application No. 09/852,301	Applicant(s) KINJO, NAOTO	
	Examiner James A. Thompson	Art Unit 2624	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 31 October 2005 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: 2-15.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: see attached.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). _____.
13. ☐ Other: _____.

DETAILED ACTION

Response to Arguments

Applicant's arguments filed 31 October 2005 have been fully considered but they are not persuasive.

Regarding page 3, line 4 to page 5, line 2: Applicant argues that "the claim describes plural densities per correction instruction and also correction of plural images based on the image correction conditions. The correction in different classes would not require correction in relation to different intensities for one class of correction. Furthermore, according to Examiner's statement, the conditions are set based on input. This would suggest one-to-one forms of correction for an image, rather than correction for multiple images as claimed."

Examiner replies that, as explained in detail in the previous office action, dated 18 June 2005, one command, namely "update", is used which provides a plurality of image correction conditions of different intensities. The different intensities are based on the fact that, for each use of the update command, the condition of the image before updating and the condition of the image after updating are different than from when the update command was last used. See also page 8, lines 5-18 of said previous office action. Hayashi (US Patent 6,271,934 B1) also teaches that automatic color calibration is performed for each image that is to be scanned and printed (column 14, lines 24-30 of Hayashi), as cited on page 8, lines 19-22 of said previous office action. Thus, the updated correction conditions are performed for each image that is to be scanned. In other words, a plurality of images corrected under the image correction conditions are reproduced according to the input command.

Applicant then argues that "the user command itself does not represent a condition of an image or a direction of correction of the image." Examiner replies that, even though the specifics require other commands and entries to establish, the "update" command itself sets all of the new conditions into the automatic color calibration memory. Without the update command, all of the other entries and commands ultimately have no use or function. Thus, the update command does indeed represent a condition of the image and a direction of correction of the image.

Applicant then argues that "there is not reason to expect that the 'remote' range of the Bernardi device is any wider than the computer based implementation, such as networked elements, of Hayashi." Examiner responds that Applicant's contention goes against any and all attempts that have been made in the field of voice recognition command software, and by extension implies that the entire field of recognizing commands by voice is useless. Clearly, an operator's voice can carry much farther than an operator's hands can reach to type on a keyboard or move a pointing device. Furthermore, there are many reasons why an operator may wish to use remote voice inputs rather than direct typing or pointing device entry. For example, a professional photographer may wish to see what effect certain image processing operations have on images that have already been taken while attempting to modify the setup of the photographic equipment in the operator's studio.

Regarding page 5, lines 3-10: Page 9, line 21 to page 10, line 4 discusses how Hayashi teaches the process of totalization as recited in claim 3. Basically, a user repeatedly updates the reference data used to correct the conversion table until the

Art Unit: 2624

user decides that the previous result is sufficient. The system of Hayashi is not limited to updating only once. The result of repeatedly updating the reference data is the claimed totalization.

Regarding page 5, line 11 to page 6, line 2: In Wong (US Patent 6,557,102 B1), the image data is archived with respect to specific image characteristics (column 5; lines 29-32, lines 49-53, and lines 57-59 of Wong). Thus, the images are not randomly stored, but are sorted with respect to said characteristics. In fact, archiving itself implies a certain level of sorting since the ability to retrieve the archived data is desired. Thus, Applicant's contention that archiving does not correspond to sorting data is erroneous. Sorting data is an inherent part of archiving. Furthermore, Wong does not merely speak of archiving, but discusses the details of performing hash function to generate unique identifiers for each image so that the image can be properly stored (and thus sorted).

Regarding page 6, lines 3-12: Applicant's allegation that Wong does not teach sorting image data has already been addressed above. Furthermore, Applicant merely alleges that the equipment where the images are acquired in Wong is not a printer, but Applicant does not provide anything of substance beyond the mere allegation. Furthermore, Wong clearly teaches that the image is originally captured as a photographic print (column 3, lines 52-57 of Wong). Thus, a printer is certainly involved in the image acquisition.

Regarding page 6, lines 13-22: The alleged deficiencies of Hayashi mentioned by Applicant in this section have already been shown above to not be deficiencies.

Regarding page 7, lines 1-10: The alleged deficiencies of Hayashi and Bernardi (US Patent 6,021,278) with respect to claims 2 and 3 have already discussed in detail above. Further, it has been demonstrated in said previous office action that claims 8-10 and 13 do not patentably distinguish over the prior art and Applicant has not addressed the rejections that are particular to claims 8-10 and 13.

Regarding page 7, lines 11-18: Kashiya (US Patent 6,295,415 B1) teaches that pictures are taken on a roll of film specifically in the order of correct-exposure, over-exposure, and under-exposure (column 6, lines 9-13 of Kashiya, as cited on page 19, lines 9-11 of said previous office action). Figure 3 of Kashiya, also cited on page 19, lines 9-11 of said previous office action, shows correct-exposure (frame 23), over-exposure (frame 24), and under-exposure (frame 25) ordered in the same specific manner. Thus, the image scenes are indeed sorted in the order of correct-exposure, over-exposure, and under-exposure, as recited in claim 11.

Regarding page 7, line 19 to page 8, line 2: Applicant merely alleges that Examiner is engaging in impermissible hindsight without supplying substantiating evidence. The references cited by Examiner with respect to claim 12, along with the explanation of the obvious engineering design choice, are sufficient in themselves to demonstrate the obviousness of claim 12, and Applicant has not even attempted to demonstrate otherwise. The motivation/suggestion to make the obvious engineering design choice is given in the Kashiya reference (see page 20, lines 21-26 of said previous office action). The limitations not specifically taught by Kashiya (see page 20, lines 16-29 of said previous office action) would have been an

Art Unit: 2624

obvious engineering modification since the same principles taught by Kayashima (organizing images based on image properties) apply to the listing of other possible criteria one of ordinary skill in the art at the time of the invention would desire to organize pictures by. Firstly, organizing pictures based on similarities between the pictures is clearly not something that is novel and non-obvious. People having been organizing pictures based on similarities for about as long as photography has existed. Furthermore, as explained in said previous office action, the specific listing recited in claim 12 (portraits, scenery, night views, underexposed scenes, and high-contrast scenes) differ from each other in large part due to the difference in exposure time that is required to obtain a each different type of picture, owing to the different lighting conditions present for each type of picture in said listing. Organizing pictures by the level of exposure has already been taught by Kayashima. This very specific listing makes use of the principles taught by Kayashima in a way that would clearly have been obvious to one of ordinary skill in the art at the time of the invention. Applicant has not expressed anything beyond a mere assertion that suggests otherwise.

Regarding page 8, lines 3-8: Claims 6 and 9 have already been demonstrated both in said previous office action and above to be taught by the prior art of record. Claims 14 and 15 have also been taught by the prior art of record, as set forth in on page 21, line 1 to page 23, line 2 of said previous office action.

Regarding page 8, lines 9-12: Therefore, the prior art rejections listed in said previous office action and the finality of said rejections are maintained.

Art Unit: 2624

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to James A. Thompson whose telephone number is 571-272-7441. The examiner can normally be reached on 8:30AM-5:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David K. Moore can be reached on 571-272-7437. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



22 November 2005

James A. Thompson
Examiner
Art Unit 2624



THOMAS D.
~~EXAMINER~~
EXAMINER